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2	DD/P	23 Nov	B
3	DD/A	18 Nov	ES
4	C/SPS	12/3	[Signature]
5	C/MS	12/6	AP
6	C/AS	12/6	[Signature]

ACTION	DIRECT REPLY	PREPARE REPLY
APPROVAL	DISPATCH	RECOMMENDATION
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Remarks?

file FOIA

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ODP # 2345/76


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15 November 1976

MEMORANDUM FOR: FOIA and Privacy Symposium Participants


25X1A FROM : 
Chief, Information and Privacy Staff

SUBJECT : Symposium Report

For your information, attached is the report of the FOIA and Privacy Symposium held at  from 18-20 October 1976. Your participation in this first in-house conference on the issues in FOI helped make the three days more meaningful for everyone who attended. I'm sure you feel as I do, that the symposium met its objective of improving communications and increasing the understanding of the concerns of the other directorates.

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Attachment: a/s 

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REPORT OF FOIA & PRIVACY SYMPOSIUM
18-20 October 1976

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25X1A [] Forty-seven officers gathered at [] from 18 October to 20 October to discuss Freedom of Information and Privacy and the Agency's response to the laws. The directorates were represented at the symposium in the following proportions: 15 officers from the DDA, 12 from the DDO, 7 from the DDI, 4 from the DDS&T and 6 from OGC. In general, this breakdown reflects the percentages of the volume of cases handled by the offices represented. Our speakers included officers from DDA, DDO, DDI, OGC and OLC, who discussed aspects of the laws as they relate to their areas. A list of symposium participants is attached.

The kick-off speaker on Monday afternoon was Mr. Andrew Falkiewicz, Assistant to the DCI, who spoke on CIA's current attitude in dealing with the press and the public. He outlined his office's role in these relations and how freedom of information and privacy contribute to the Agency's public image.

25X1A On Tuesday morning Mr. James Kronfeld, who was formerly with the Congressional committee which drafted the Privacy Act, gave us a synopsis of the legislative history of FOI and Privacy. Our next two speakers formed what some considered the opposing camps: [] Chief of the Information Services Staff, DDO, and [] Office of Current Intelligence, DDI. [] discussed the problems encountered by the DDO in trying to run a clandestine service and still be responsive to the law. [] spoke on the DDI's approach to Freedom of Information and the apparent success of their program. These two speakers were an interesting contrast and highlighted the difficulties the Agency faces in interpreting and complying with the laws.

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25X1A The next presentation, which was a departure from the schedule, was well handled by an Office of General Counsel panel of lawyers. Messrs. [] [] discussed past and present FOI and Privacy cases in litigation and our current legal strategies. Several tactics for handling initial responses were suggested to increase our protection under the law in the

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event of future court action. It was argued, though, that procedures to standardize and limit explanatory responses were likely to anger requesters with the result being an increase in the number of cases taken to court. The debate reached an impasse.

25X1A The evening speaker on Tuesday was [redacted], Assistant for Information, DDA, whose remarks sparked the evening discussions. His comments on the commitment of Agency management to FOI and Privacy initiated some heated debate among symposium participants. He also reiterated Mr. [redacted] concern about the philosophical tightrope of a secret intelligence organization in an open society and the public's right to know versus the Government's need to protect. Mr. [redacted] concluded the symposium on Wednesday morning with a short wrap-up and projection of the future of FOI and Privacy in CIA.

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25X1A All of the speakers were stimulating and offered some controversial interpretations of the laws, but the high point of the symposium was the response to the team exercises. Participants were divided into five groups with representatives from each directorate and an OGC lawyer to discuss several aspects of the laws. The first assignment was designed to expand the officers' views of the Acts and to increase their awareness of other legitimate positions. Each team proposed amendments to the laws from a different perspective: the Berkeley chapter of the ACLU, the National Press Club, the Federal Bar Association, a CIA Freedom of Information analyst and a private law firm seeking information for 35 clients. After the team presentations, Mr. Kronfeld commented on the prospects for Congressional support for the proposed amendments. His opinion was that the Senate committees will not consider any new amendments until several more years of experience with the present laws. Most officers approached the assignment honestly and benefitted from trying to understand the position of other organizations.

The second team exercise involved addressing a number of questions on the Agency's response to Freedom of Information and Privacy. The questions and a short synopsis of the discussions of the questions are attached.

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SUMMARY:

Although the attendees represented many different component and directorate viewpoints, there was a definite cohesiveness among the participants exhibited in an excellent exchange between reviewers, denying officers, coordinators, affidavit signers and lawyers. Everyone gained a better understanding of the problems experienced by the others. There was no complaining or griping over the various procedures and requirements for responses — everyone took a constructive approach to improving the system and its product. Problems were rapidly identified, thoroughly discussed and a number of positive recommendations were offered.

Some of the recommendations for IPS include:

- (1) Working with the directorates on agreement and publication of Agency-wide standards for sanitization of material.
- (2) Expanding the index of information released to the public as soon as possible.
- (3) Instituting an in-house training program for newcomers in the FOI and Privacy business.

Other general concerns were expressed:

- (1) There was a demand for a clear-cut definition of sources and methods to be used by reviewing and denying officials.
- (2) There was a request for a definition of first amendment rights under the Privacy Act.
- (3) There should be guidelines on how to deal with harassment tactics used by requesters.
- (4) There needs to be better policy guidelines on the release of covert action information.

Attachments: a/s

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DISCUSSION QUESTIONS

In using these questions, we did not necessarily expect the teams to come to any agreement on definitive answers--in some cases there are no answers. But we thought everyone would benefit from the exchange of ideas and the chance to speak out on some of the issues in Freedom of Information and Privacy. The questions the teams addressed are listed below followed by a short summary of their discussions.

1. The backlog of cases in the Information & Privacy Staff is presently about 1,100 cases. One reason for this is the delay involved in the present system of decentralized review--each directorate component reviewing its own documents for release. The time required to process a case could be cut, thereby reducing the backlog, if the review for release were centralized.

← question 2
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The group discussing this question did not feel that a centralized review for release would solve the problem of the enormous case backlog. Such a system could work only if the right people were gathered to make up the centralized staff; but, getting experienced, senior officers from all components to work in the area of information and privacy would be difficult.

2. In those cases where two components cannot agree on the segregation of a document, who should be the final authority when the matter is not sufficiently important to take to the IRC?

Although many opinions were expressed, no general consensus was reached on the final segregation authority. Some people thought the final authority should be with the operating component since they would be the denying office for the document. Some thought that OGC should make the decision since they know how well such decisions would stand up in court. One person's view was that IPS should have final resolution authority and could arbitrate disagreements between components. No one felt the issue was significant enough to resolve into a matter of policy and all future cases will be handled on an individual basis.

3. In the past, the Agency's response to information requests from the public was "No comment," and later, "We can neither confirm nor deny" (glomarize) the item of interest. With the FOI and Privacy Acts, these

has the English language failed us again?

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answers do not seem appropriate and we should be more responsive to the

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have a file. How can this conflict in replies be handled to balance protection of sensitive information and candor with the public?

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→ Glomarization was a heavily debated topic and everyone agreed it was a problem. The viewpoints were so varied that the group, not surprisingly, did not come up with an alternative to the practice. There was some retrenching and advocacy of glomarization on all responses, but most people felt we should just continue with our present procedures and judicious use of glomarization.

4. Several proposals have been made to consolidate the offices releasing information to the public into a CIA Public Information Office similar to what exists in other agencies. Is this a worthwhile concept?

The thrust of this question referred to establishing a single office to perform all public relations activities. Such an office would handle inquiries from the public (IPS functions) and the media (Andrew Falkiewicz's functions), requests for overt briefings (OTR's briefing office function) and similar activities. The group handling this question did not focus on the issue of office/function consolidation, but they did feel that there should exist some central point in the Agency which would know the extent and detail of information in the public domain.

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5. What do you think of the "salami approach" to the release of information? Is there another approach?

The consensus on the "salami approach" was that it is a bad way to handle the release of information. This practice ruins the Agency's credibility and violates the spirit of the law. Group members discussing this question felt that if the case is done correctly the first time, the requester is less likely to appeal. Another view was that we risk losing valuable information on appeals where we have initially given out all we possibly can.

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6. Many of our Privacy responses raise more questions than they answer in the minds of requesters because of the lack of explanation in plain terms about what we have in a file and specifically why it cannot be released. Should we consider a more descriptive response to requesters, where security and intelligence sources and methods permit? Or should we continue to give only what is legally required?

From a public relations standpoint, the more explanation we can provide to the requester on the segregated and denied material, the more satisfied he would feel. Even if many of the documents were denied, the requester would realize that we sincerely made an effort to help him. Hopefully, he would be less inclined to appeal our actions. One OGC opinion though, was that by being more candid initially, we risk saying too much and possibly hurting ourselves if the case goes to court. That opinion was countered with the argument that we should not focus on the possibility of litigation in our initial handling of the cases but try to deal honestly with each one. To do otherwise would be a return to the "No Comment" era.

7. As a reviewing official, do you feel any obligation under the FOI concerning the privacy of a deceased person?

The group debated the merits of the release of information on deceased Agency employees to their own families and the differences in handling releases on public and non-public figures. No agreement was reached except to handle each case on an individual basis. Strict rules for compliance with no degree of flexibility cannot be established for all cases.

8. Most agencies have established public reading rooms where a person can go to review documents available to the public. He can then decide if he wants copies, rather than paying for copies he is not sure he wants, as is now the case. Can CIA continue to ignore this requirement of the FOIA?

So far we have been able to finesse requesters who want to use our reading room facilities; but, it was agreed that the Agency cannot ignore the requirement much longer. There are definite security problems involved in setting up such a room. Some of

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the suggestions to overcome access problems include using a room at the Washington Area Recruitment Office (WARO) in Ames or using the Pentagon reading room which is currently being shared by several other agencies. Another problem involves the availability of the Index of Released Documents. The totality of that document and its ready reference in the reading room worries some people.

9. After the FBI, the CIA has the longest response time for FOI requests, thereby causing our significant case backlog. The FBI recently requested an \$11.4 million budget increase, promising to eliminate their backlog of cases in one year. With CIA left thus exposed, do you think we should allocate additional resources over our present allocation?

The proposed FBI approach concentrates their resources on the initial phase of the problem--the backlog of requests. No one felt their approach would be worthwhile for CIA. Since the number of new requests is falling off and the number of appeals is rising, we must shift our attention and hopefully some resources to the end of the process--the appeal and litigation phases. All symposium participants felt that the OGC lawyers are terribly overworked and under heavy stress from the increased workload. If the Agency were to expand its commitment, it should be by increasing the number of lawyers in the FOI and Privacy Division of OGC.

10. To date, CIA has seldom accommodated bonafide historical researchers by granting them access to records because of security and logistical considerations. There is mounting pressure to grant access as provided for under Executive Order 11652. To what extent should CIA allocate resources to meet this requirement?

Insofar as security permits, we should make every effort to accommodate bonafide historical researchers. Certainly our willingness to cooperate with these people would have positive public relations value. Many CIA stories are worth publishing and we should allow serious writers to research them; our own History Staff is not capable of handling such an assignment with its present size staff. Also, some benefit is gained by having an outsider review historical events without any Agency bias.

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